FAO No.56 of 2006

Tilak Raj Versus Ramesh Kumar and others

Present: None

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UMA NATH SINGH,J.(oral)

This appeal was listed on 4.8.2006 but no one appeared even in the second round of pass over. The matter was adjourned to 7.8.2006. Again learned counsel for the appellant did not appear. Hence, by order it was adjourned for today. Today also no one appears.

We have perused the award and other connected documents filed with the appeal. It appears that on the date of accident i.e. 12.6.2001at about 10.00 P.M. the claimant was going to house on a motor cycle (No.HR-05D-0071) from Karnal City. The moment he reached the crossing of Sector 6, Urban Estate, Karnal, a container bearing registration No.PB-10AK-9443 being driven at a very high speed, and rashly and negligently in a zig-zag manner without blowing horn came from Ambala side. It struck against the motor cycle of the claimant on the wrong side. The claimant fell down on the G.T. Road and the offending vehicle was stopped at a distance of 300-400 yards from the place of accident. One Satish Kumar Batra witnessed the accident. The claimant was taken to Civil Hospital, Karnal, by his brother and, thereafter, shifted to P.G.I., Chandigarh. He suffered 100% disability. A claim for Rs.10 lacs with 24% interest per annum was laid before the Tribunal. Smt.Deepa, wife of the claimant, appeared as PW4, and filed her affidavit Exhibit PW4/A. According to her, the claimant has lost his memory and has also suffered 100% disability. An amount of

Rs.1,50,000/- has been spent on his treatment. The claimant was running a workshop in partnership with Ashok Kumar. According to his wife, the claimant was earning Rs.3,000/- to Rs.4,000/- per month. It appears that according to this witness, since the day the claimant was taken to P.G.I. Chandigarh for treatment, he is not in a position to do any work, and there is no other source of income.

Ashok Kumar (PW5), brother of the claimant, also appeared and corroborated the statement of PW4 regarding the earning of the claimant. His another brother, Harish Kumar, has supported the medical expenditure to the tune of Rs.1,50,000/-.

Dr.Rajesh Chhabra, Assistant Professor, Department of Neuro Surgery, also appeared in the witness box as PW3. He proved the disability certificate, Exhibit P4. The Tribunal has taken a note of the fact that though according to evidence on behalf of the claimant he has lost his memory and was not in a position to re-collect anything, but still the petition was signed under his signatures. It appears that the claimant, at the time of accident, was around 30 years of age. The claimant was awarded a sum of Rs.60,000/- towards medicines, CT scan charges etc. That apart, he has been awarded a sum of Rs.20,000/- for pain and suffering and mental agony. Besides, the Tribunal has awarded Rs.13,000/- towards transportation charges and Rs.3,60,000/- towards loss of income and permanent disability. A further amount of Rs.5,000/- was awarded towards special diet etc. Looking to the earning of the appellant said to be between Rs.3000/- to Rs.4,000/-, his age so also the nature of injuries, and medical expenses, the Tribunal has awarded just and reasonable compensation. Further, in an identical case which is reported in **New India Assurance Company Ltd.**

Versus Charlie and another, 2005(10) SCC 720, wherein also the claimant had received 100% disability and he was aged 37 years, an amount of Rs.3,50,000/- was paid towards compensation with interest of 7.5% per annum. In the instant case, the Tribunal has awarded Rs.4.58 lacs with a higher interest @ 9% per annum. We do not find any scope for further enhancement of compensation. That apart, the re-filing of the petition is also barred by 164 days' delay. Accordingly, the FAO is dismissed on merits so also on the ground of delay for which there is no satisfactory explanation.

(UMA NATH SINGH)
JUDGE

(S. D. ANAND)
JUDGE

August 8, 2006
SRM